

No. 17-16161

IN THE
United States Court of Appeals for the Ninth Circuit

FACEBOOK, INC.,
Plaintiff-Appellee,
v.

POWER VENTURES, INC. & STEVEN SURAJ VACHANI,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
Case No. 5:08-cv-05780-LHK, Hon. Lucy Koh

**APPELLEE'S CONSENT MOTION TO
EXTEND TIME TO FILE ANSWERING
BRIEF**

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Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2.2(b), Appellee Facebook, Inc. respectfully requests a further extension of 38 days to file its answering brief, up to and including May 31, 2018. Counsel for Appellants Power Ventures, Inc., and Steven Suraj Vachani have advised the undersigned that they consent to this motion.

1. This Court previously granted both Appellants and Appellee equal extensions of time to file their principal briefs pursuant to a joint consent motion. *See* ECF No. 8, 9; *see also* ECF No. 12, 13 (correcting a computational error).

2. Subsequent to that joint consent extension, Appellants failed timely to file their opening brief on the agreed-upon deadline. They eventually filed their brief over a month late, followed by a motion to file a late brief. ECF Nos. 14, 16.

3. The Appellate Commissioner granted Appellants' motion to file a late brief. ECF No. 18. As a result, Appellants effectively received the benefit of an additional 38-day extension of the opening brief deadline.

4. Appellee now seeks a corresponding 38-day additional extension of time to file the answering brief, from the current deadline (April 23, 2018, *see* ECF No. 18) to and including May 31, 2018. Appellee's answering brief was originally due October 11, 2017. ECF No. 1.

5. In addition to granting the parties equal time, substantial need justifies this request for an extension. Undersigned counsel has and will continue to have substantial obligations that support the additional time requested, including: an opening brief in *United States v. DISH*, No. 17-3111 (7th Cir.), due February 22; oral argument in *Kinard v. DISH Network Corp.*, No. 17-10282 (5th Cir.), on March 5; and a reply brief in *Hughes v. United States*, No. 17-155 (S. Ct.), due March 20, and oral argument in that case on March 27.

6. Appellee has exercised diligence and anticipates filing the brief within the time requested. The Court Reporter is not in default with regard to any designated transcripts.

7. As noted above, Appellants consent to this motion.

Respectfully submitted,

/s/ Eric A. Shumsky

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Counsel for Plaintiff-Appellee

February 16, 2018

DECLARATION

Pursuant to Circuit Rule 31-2.2, the undersigned declares under penalty of perjury that the statements included in the preceding motion are true and correct to the best of his ability.

Respectfully submitted,

/s/*Eric A. Shumsky*

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February 16, 2018

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 16, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ *Eric A. Shumsky*

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